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In re Application of
Akihiko Ito, et al.
Application No. 09/944,189
Filed: September 4, 2001
For: METHOD OF DRIVING ELECTRO-
OPTICAL APPARATUS, DRIVE CIRCUIT
FOR ELECTRO-OPTICAL APPARATUS,
ELECTRO-OPTICAL APPARATUS, AND
ELECTRONIC APPARATUS

MAILED

DEC 03 2004

DIRECTOR'S OFFICE
TECHNOLOGY CENTER 2800
DECISION ON PETITION
TO WITHDRAW HOLDING OF
ABANDONMENT

This is a decision on the Petition to Withdraw the Holding of Abandonment filed September 24, 2004, pursuant to 37 C.F.R. § 1.181(a). No fee is required.

This application was abandoned for failure to file a timely response to the non-final Office action mailed October 21, 2003. A Notice of Abandonment was mailed on September 20, 2004.

The showing required to establish the failure to receive an Office communication must include a statement from the practitioner stating that the Office communication was not received by the Practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received. A copy of the docket record where the non-received Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement. See "Withdrawing the Holding of Abandonment When Office Actions Are Not Received", 1156 Official Gazette 53 (November 16, 1993) and M.P.E.P. § 711.03(c), section II. The showing outlined above may not be sufficient if there are circumstances that point to a conclusion that the Office communication may have been lost after receipt rather than a conclusion that the Office communication was lost in the mail.

A review of the record indicates that the Notice of Allowance was properly mailed to the practitioner of record at the correspondence address of record at the time of mailing. Thus, there was no irregularity in mailing the Notice of Allowance on the part of the Patent and Trademark Office.

Petitioner's statement that "A search of the file jacket and docket records indicates that the Office Action was not received" is taken as though the practitioner personally searched the file jacket and docket records as required and thus the petition has met the requirements of M.P.E.P. § 711.03(c), section II.

In view of the above, there is showing of non-receipt of the Office action at the correspondence address of record at that time. Accordingly, the application was not abandoned in fact.

The petition is **GRANTED**.

Accordingly, the Notice of Abandonment is vacated and the holding of abandonment is withdrawn.

The application file is being forwarded to TC 2600 technical support staff to re-mail the Office action. The shortened statutory period for reply will be set to run from the mailing date of the new action.


Dwayne Bost
Special Program Examiner
Technology Center 2600
Communications